

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 9, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 10HD-127

Hawai'i

Approve the Withdrawal of Approximately 2,176.822 Acres from General Lease No. S-4475, K.K. Ranch, Inc., Lessee, Parcels 7-A por. and 7-B, Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3rd/4-4-14:02 por. & 03;

Approval In Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of such 2,176.822 Acres for Addition to the Mauna Kea Forest Reserve, and Issuance of Immediate Management Right-of-Entry, Parcels 7-A por. and 7-B, Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3rd/4-4-14:02 por. & 03; and

Consent to Extension of Lease Term, General Lease No. S-4475, K.K. Ranch, Inc., Lessee, for Approximately 5,105.178 Acres of Remaining Lands of Parcel 7-A por., Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3rd/4-4-14:02 por. & 11.

APPLICANTS AND REQUESTS:

1) Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), for withdrawal of approximately 2,176.822 acres from General Lease No. S-4475, approval in concept of the set-aside of the same to DOFAW for addition to the Mauna Kea Forest Reserve, and issuance of immediate management right-of-entry to DOFAW covering such 2,176.822 acres.

2) Lessee, K.K. Ranch, Inc., for extension of General Lease No. S-4475 as to approximately 5,105.178 acres remaining after the withdrawal, to amortize self-financed improvements in the amount of \$124,985. In order for Lessee to amortize this expenditure, the Lessee is requesting an extension of the remaining area of General Lease No. S-4475 for a term of 20 years, commencing on March 1, 2011 and expiring on February 28, 2031 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-11, 36(b), 36(d) and 37, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Parcels 7-A and 7-B, Government Land of Kalopa and Ka'ohē 3, Hamakua, Hawaii, identified by Tax Map Key: 3rd/4-4-14:02, 03 & 11, as shown on the attached map labeled Exhibit A. The withdrawal and set-aside covers all of parcel 03, and a portion of parcel 02. The requested lease extension affects the remainder of parcel 02 and all of parcel 11.¹

AREA:

Original lease area –	7,282 acres, more or less.
Area of DOFAW's requested withdrawal –	2,176.822 acres, more or less
Area of staff's recommended lease extension –	5,105.178 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	A-40a

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Pasture purposes, and alternate agriculture on 10% of lands not affected by the Palila Critical Habitat Mitigation easement.

TERM OF LEASE:

35 years, commencing on March 1, 1976 and expiring on February 28, 2011.
Requested extension of 20 years commencing on March 1, 2011 and expiring on February

¹ Parcel 11 did not exist when General Lease No. S-4475 was issued. The parcel appears to have been created to carve out 15 acres from Parcel 02 under Revocable Permit No. S-5144 to the U.S. Department of Agriculture, Forest Service, Pacific Southwest Forest and Range Experiment Station, for a forest research station that is no longer in use.

28, 2031.

LEASE ANNUAL RENTAL:

Current rent is \$21,233.00, due in semi-annual installments of \$10,616.50 on June 1 and December 1 of each year.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 10th, 20th and 30th years of the term. The last rental reopening occurred on March 1, 2006.

Reopenings for the extended term shall be on September 9, 2010 (immediate reopening), with one additional reopening on March 1, 2021.

PURPOSE OF SET-ASIDE:

For addition to Mauna Kea Forest Reserve.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

LESSEE'S SELF-FINANCED IMPROVEMENTS:

A summary report of expenditures has been submitted by Lessee and is included as Exhibit C. Staff has reviewed the details of the report as well as the tax returns provided by Lessee, the report of Lessee's certified appraiser, Norman C. Franco, dated February 1, 2010, and has also conducted a site inspection of the property. Staff confirms the expenses incurred relate to the lease property.

The Lessee has made substantial improvements to the perimeter fencing, interior paddock fencing, and livestock watering system.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

1. Applicant DOFAW shall be required to process and obtain subdivision approval for the area to be withdrawn from TMK: 3rd/ 4-4-14:02 and for any consolidation with

3rd/ 4-4-14:03 and/or other abutting State lands, if necessary, using available Federal Highway Administration (FHWA) and/or State Department of Transportation (SDOT) funding;

2. Applicant DOFAW shall be required to provide survey maps and descriptions according to State DAGS standards for both the withdrawn area and the lands remaining under General Lease No. S-4475, using available FHWA and/or SDOT funding; and
3. Applicant K.K. Ranch, Inc. shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

General Lease No. S-4475 was sold at public auction on August 25, 1975 to Richard V. Toledo (Toledo) for a period of 35 years commencing March 1, 1976. The Board of Land and Natural Resources consented to the assignment of General Lease No. S-4475 from Toledo to K.K. Ranch, Inc. (Lessee) at its meeting of March 12, 1976.

Withdrawal and Set-Aside to DOFAW

At its meeting of December 14, 2001 (Item D-37) and November 15, 2002 (Item D-19), the Board approved, as amended, the grant of a 10-year term, non-exclusive easement to the State Department of Transportation (SDOT) in connection with the Saddle Road improvement project for Palila Critical Habitat (PCH) Mitigation purposes. See Exhibit D attached. As a condition to granting the PCH Mitigation easement, the Board agreed in principle to extend the terms of General Lease No. S-4475 and other affected leases in accordance with the provisions of Section 171-36(b), HRS, as amended, to assist in compensating the lessees for the lands made subject to the easement. (Exhibit D)

The Board and SDOT thereafter executed Grant of Non-Exclusive Easement No. S-5665 with an effective date of November 27, 2002 (the PCH Mitigation Easement). The PCH Mitigation Easement restricted Lessee's grazing rights and use of approximately 2,176.822 acres of mauka pasturelands leased under General Lease No. S-4475.² The easement area

² An Amendment of General Lease No. S-4475 entered into on May 19, 2003 stated that the area of the Palila mitigation easement was 2,123.629 acres, which is 53.193 acres less than the 2,176.822 acres set forth in General Lease No. S-5665, the PCH Mitigation Easement. The 2,123.629-acre figure was an estimate that was made prior to the survey of the easement area. As set forth in the PCH Mitigation Easement, the actual area of the easement affecting the Lessee's lands is 2,176.822 acres. It is not clear why the estimated figure was incorporated into the lease amendment. The PCH Mitigation Easement figure controls. Land Division will need to make accounting adjustments/credits as necessary to ensure that Lessee has paid, and going forward will pay, rent that factors in the correct PCH Mitigation Easement area.

was fenced using United States Department of Transportation, Federal Highway Administration (FHWA) and/or United States Department of Defense funds, and domestic and feral ungulates, including cattle and sheep, were removed from the area.

Beginning in 2004 and continuing presently, pursuant to the intent of the Biological Opinion of the U.S. Fish and Wildlife Service (USFWS) for the Saddle Road Realignment and Improvement Project dated July 27, 1998, the Division of Forestry and Wildlife (DOFAW) has conducted a forest restoration program on the PCH Mitigation Easement area for the purpose of providing long-term habitat for Palila at considerable effort to the State and with significant progress to date.

By letter dated October 24, 2009, FHWA advised DLNR that consultations with USFWS had resulted in the issuance of a new Biological Opinion for the Saddle Road project on September 11, 2009 (BO). This action was taken in part because of USFWS' concern that the 10-year term of PCH Mitigation Easement is inadequate to establish and maintain a viable mamane forest capable of supporting a self-sustaining Palila population in compliance with the BO. The BO committed USFWS and FHWA to ensure the PCH Mitigation Easement areas serve as long-term habitat for Palila recovery. The FHWA letter explained that if the PCH Mitigation Easement area is not added to the State's forest system, or otherwise set aside for a term sufficient to restore Palila habitat, FHWA will likely be found in violation of the BO, which could result in the cessation of all activities on the Saddle Road project using federal funding.

To remedy this situation and to retain the significant progress that has been made in the long-term restoration of the site, DOFAW has requested that the PCH Mitigation Easement area be withdrawn from General Lease No. S-4475 and set aside to DOFAW as an addition to the Mauna Kea Forest Reserve. DOFAW will coordinate with SDOT, USFWS and others to ensure that the withdrawn area continues to be managed for PCH Mitigation purposes. The set-aside to DOFAW will be subject to the PCH Mitigation Easement, which will remain in effect until it expires by its own terms.³

In accordance with the Memorandum of Understanding Regarding Implementation of the Saddle Road Palila Critical Habitat Mitigation, dated August 10, 1999 signed by FHWA, USFWS, SDOT, DLNR and others, all costs related to the subdivision of the lands for the purpose of the set-aside of the PCH Mitigation Easement area shall be borne by FHWA

³ In addition to its effect on portions of General Lease No. S-4475, the PCH Mitigation Easement also affected portions of General Lease Nos. GL S-4471 to Parker Ranch, Inc., GL S-4477 to SC Ranch Co., Inc., and GL S-4478 to Boteilho Hawaii Enterprises, Inc., in connection with the Saddle Road improvements project for PCH mitigation purposes. DOFAW has also conducted significant forest restoration activities on those PCH mitigation areas and intends to also request that those lands be permanently withdrawn and set aside for addition to the Mauna Kea Forest Reserve at a later meeting of the Board. Staff is currently working on those submittals and hopes to bring that before the BLNR in a few months.

and/or SDOT.

Extension of General Lease No. S-4475

Pursuant to the Board actions of December 14, 2001 (Item D-37) and November 15, 2002 (Item D-19), a lease amendment dated March 19, 2003 reduced the rent under General Lease No. S-4475 from \$28,375 to \$20,100 per year as a result of the PCH Mitigation Easement (a rental reopening in 2006 increased the annual rent to \$21,233). Additionally, the amendment expanded the permitted use of the remaining lands under the lease consistent with HRS Section 171-36(c) to allow Lessee to use 10% of the leased area not affected by the easement for alternate agricultural use.

Before the PCH Mitigation Easement went into effect, SDOT contacted the affected lessees and advised them of their right to make a claim under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Relocation Assistance Act). Under the provisions of this Act, the lessees would have been entitled to compensation for actual, reasonable moving expenses, and for permanent improvements made to the leased land affected by the easement in accordance with the leases. Staff understands from SDOT that the lessees did not submit claims for assistance under the Act.

The Lessee is now requesting an extension of General Lease No. S-4475 so that the expenses incurred through the substantial improvements to the portion of the property outside of the PCH Mitigation Easement can be amortized. In cooperation with the U.S. Department of Agriculture (USDA) and the Natural Resource Conservation Service (NRCS), the Lessee replaced approximately 31,000 linear feet of fence, including perimeter and paddock fencing, and installed additional paddock fencing within the lease area, all under the federal government's Environmental Quality Incentive Program (EQIP). As indicated in Exhibit C, this fencing was installed between 2007 and 2009.

In the same period, Lessee also installed a 500 gallon galvanized water trough, 5,500 linear feet of 1" water pipeline, and 1,000 linear feet of 2" water line to improve its livestock watering system. The total cost for all improvements (fencing and water) was \$198,905 with the Lessee contributing \$124,985.

The Lessee has provided an appraisal report dated February 1, 2010 from a certified appraiser regarding the economic life of the proposed improvements to the leasehold property. According to the appraiser and based on his discussions with the NRCS District Conservationist for North Hawaii, the life expectancy of the fencing is estimated to be approximately 20 years, and the life expectancy of the water improvements is 10 years. The appraiser valued the fencing improvements at \$218,938, and the water improvements at \$50,815.

The Hawaii District Land Office staff conducted a site inspection of the lease on April 19, 2010 and confirmed all the improvements were completed by the Lessee. All improvements

to the paddocks, perimeter fencing and livestock watering system adhere to the current conservation plans. Lessee noted during the inspection that a breach in the easement fence line caused by wind and/or water damage has allowed his cattle to enter into the mitigation area on occasion. Lessee will need to resolve the issue with DOFAW.

The Lessee is compliant with the terms and conditions of the lease with regards to rent, insurance and performance bond. The Lessee submitted a conservation plan approved by the Chairperson on July 20, 2006.

The Lessee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The last rental reopening occurred on March 1, 2006. There are no further rental reopenings. There are no outstanding rental reopening issues.

The property has been developed, utilized and maintained by the Lessee as a beef cattle operation, substantially for the purpose for which it was leased (pasture).

Comments were solicited from the government agencies identified below with the results indicated.

Agency	Comment
State Department of Transportation, Highways Division	No response.
DLNR – Division of Forestry and Wildlife – Na Ala Hele	DOFAW supports the withdrawal of the PCH Mitigation lands for addition to the Mauna Kea Forest Reserve.
Department of Agriculture	No comments.
Office of Hawaiian Affairs	No response.
County of Hawaii Planning Department	No comments.
U.S. Department of Transportation, Federal Highway Administration	No objection. Seeks clarification on whether USFWS and the Biological Resources Division of the US Geological Survey will be able to continue to conduct studies and habitat restoration under the PCH Mitigation Easement until its termination.
U.S. Fish & Wildlife Service	USFWS supports the transfer of the PCH Mitigation lands to forest reserve. See Exh. E.
U.S. Department of Agriculture, Forest Service, Pacific Southwest Forest and Range Experiment Station	No response.

Regarding the question from FHWA on continued access to the PCH Mitigation Easement area by USFWS and the Biological Resources Division of the U.S. Geological Survey (BRD) for the duration of the easement, staff checked with DOFAW who confirmed that USFWS and BRD will continue to have access to the area for Palila study and habitat restoration purposes until the easement expires.

Staff is recommending that the requested lease extension be granted, subject to DOFAW's requested withdrawal. Excluding the PCH Mitigation Easement area from the lease extension will relieve Lessee of any obligation to pay insurance or real property taxes on the land encumbered by the easement. Finally, staff recommends that no further compensation or rent relief be offered to Lessee as a result of the withdrawal. As discussed above, the Board previously reduced Lessee's rent in proportion to the land area encumbered by the easement. SDOT offered to compensate Lessee under the Relocation Assistance Act when the PCH Mitigation Easement was initially put in place and Lessee did not submit a claim. No further compensation or relief is warranted (other than the rent adjustment mentioned in footnote 2 above).

RECOMMENDATION:

That the Board, subject to the Applicants fulfilling the Applicant requirements listed above:

1. Approve the withdrawal of approximately 2,176.822 acres from General Lease No. 4475, K.K. Ranch, Inc., Lessee.
2. Approve in concept the set-aside of the withdrawn 2,176.822 acres to the Department of Land and Natural Resources, Division of Forestry and Wildlife, under the terms and conditions cited above, which are by this reference incorporated herein. The set-aside to DOFAW for addition to the forest reserve shall be subject to staff returning to the Board at a later date to report the results of the public hearing held pursuant to recommendation number 3 below.
3. Pursuant to HRS §183-11, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Hawaii regarding the proposed addition of approximately 2,176.822 acres to Mauna Kea Forest Reserve at Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3rd/4-4-14:02 por. & 03, and further, pursuant to HRS §183-12, as amended, authorize the Chairperson to:
 - A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.
4. Authorize the issuance of an immediate management right-of-entry permit to the Division of Forestry and Wildlife covering the withdrawn 2,176.822 acres under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. The management right-of-entry shall remain in effect until the executive order setting aside the land to the Division of Forestry and Wildlife is finalized; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the extension of General Lease No. S-4475, K.K. Ranch, Inc., Lessee, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
 - B. The lease extension shall be granted only as to the approximately 5,105.178 acres of lands that are not encumbered by Grant of Easement No. S-5665, the Palila Critical Habitat Mitigation Easement, without any compensation, rent reduction or other relief due to Lessee as a result of such limited extension;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,



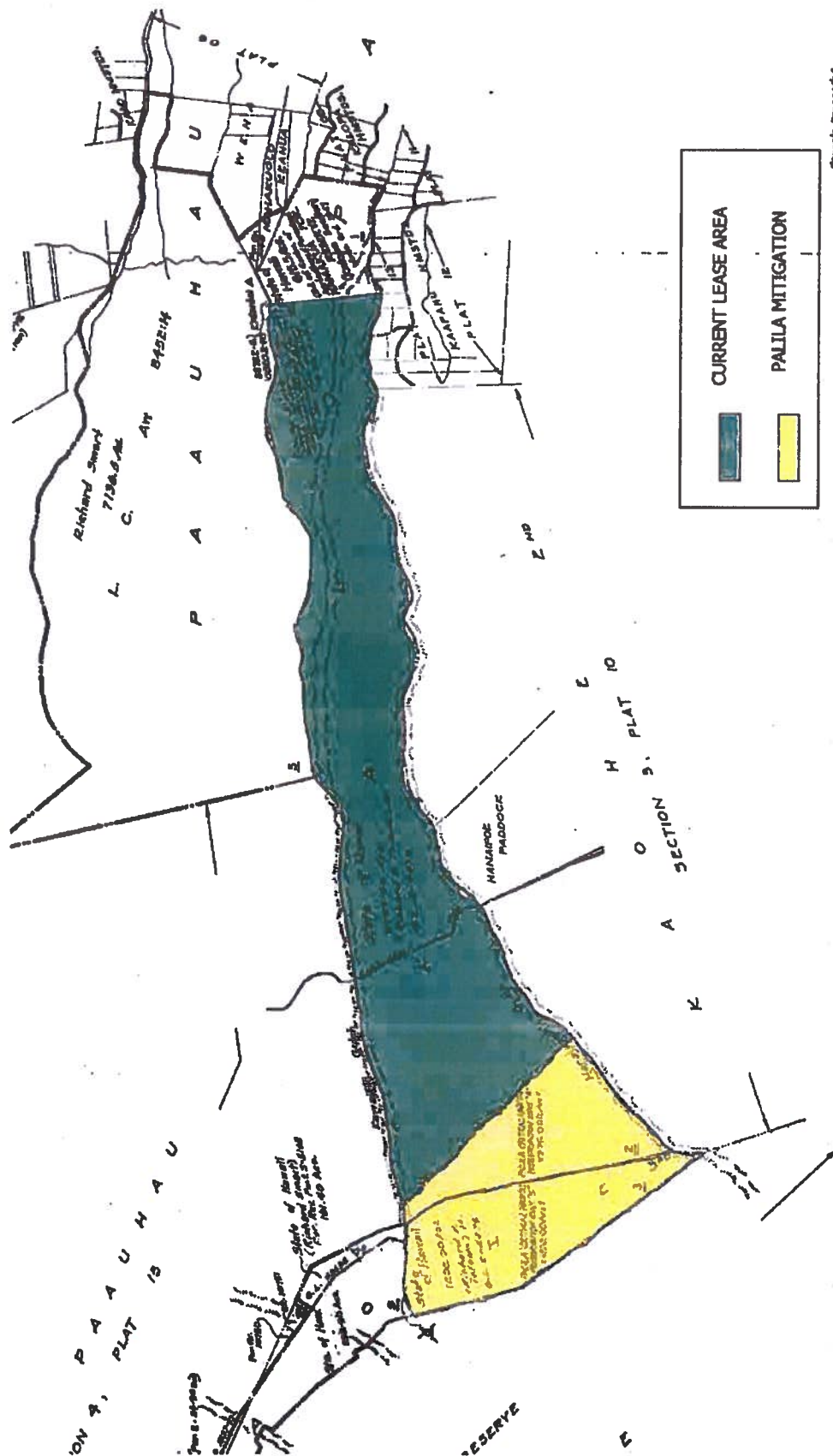
Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





Alameda Properties, Inc.

TRIP	DIVISION
4	4
4	4
14	14
CONTAINING	PARCELS
SCALE: 1 in = 3000 ft	

ADVANCE SHEET
SUBJECT TO CHANGE

LAWAII

EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Withdrawal of Approximately 2,176.822 Acres from General Lease No. S-4475, K.K. Ranch, Inc., Lessee; Approval in Concept of the Set-Aside of same to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) for Addition to the Mauna Kea Forest Reserve; Consent to Extension of Lease Term, General Lease No. S-4475, K.K. Ranch, Inc., Lessee, for Approximately 5,105.178 Acres of Remaining Lands

Project Number: PSF No. 10HD-127

Project Location: Parcels 7-A and 7-B, Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3rd/4-4-14:02, 03 & 11

Project Description: Withdraw approximately 2,176.822 acres from General Lease No. S-4475, K.K. Ranch, Inc., Approval in concept of the set-aside to DOFAW for addition to the Mauna Kea Forest Reserve; Consent to 20-year extension of General Lease No. S-4475 as to approximately 5,105.178 remaining acres of lease premises.

Consulted Parties: State Department of Transportation – Highways; U.S. Fish and Wildlife Service; and others

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

EXHIBIT B

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

With respect to the withdrawal from General Lease No. S-4475 and approval in concept of the set-aside to DOFAW, the action is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. With respect to the extension of General Lease No. S-4475, there is no change in use from that previously existing – pasturage of livestock.

Recommendation: The subject land is currently under lease to K.K. Ranch, Inc. for pasture purposes pursuant to General Lease No. S-4475, and a portion of the lease premises is encumbered by Grant of Easement No. S-5665 preserving land for Palila Critical Habitat (PCH) Mitigation purposes. The purpose of the withdrawal and set-aside of the portion of the lease encumbered by the easement to DOFAW is to add the land to the Mauna Kea Forest Reserve. An extension of lease as to the remainder of the premises under General Lease No. S-4475 will permit the lessee to continue its present operations for an additional 20 years. As such, the proposed withdrawal and set-aside and the lease extension would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

The withdrawal from the lease, the approval in concept of the set-aside to DOFAW, and the extension of the lease, will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to DOFAW's proposed use of a portion of the lands for an addition to the Mauna Kea Forest Reserve, DOFAW shall be responsible for compliance with Chapter 343, HRS, as amended.

Laura H. Thielen, Chairperson

Date

K. K. RANCH, INC. Expense Sheet

Fence Name	Elevation (ft)	Direction	Type	Length (ft)	Total cost (\$)	\$/ft. to Construct (\$)	Comments	NRCS life expectancy (yrs)	Construct dated
Mana road	5000	E/W	5 strand barb	5300	\$25,500	\$5.00	No EQIP cost sharing for this fence	20	2007
Top of Bottle neck paddock	4500	E/W	6 strand barb	4000	\$21,000	\$5.25	No EQIP cost sharing for this fence. Old fence runs parallel and is scheduled for removal.		
Top of Kapepe Mauka	4000	E/W	5 strand barb	8213	\$31,432	\$5.05	EQIP cost sharing used for this fence. Old fence runs parallel and is scheduled for removal.	15-20	2008
Mauka-Makai	4200- 2700	N/S	5 strand barb	10088	\$80,117	\$5.98	EQIP cost sharing used for this fence. Divides Kapepe makai and Kapepe mauka paddocks in two each.	15-20	2009
1" water line	3000	N/S	1"	5500	\$8,977	\$1.27	Start of 1" water line	20	2008
Water troughs and tank			Galvanize 500 gallon water trough				Water trough installation and pad, Kapepe Mauka Waimaa	15	2009
Top of Kapepe makai	3000	E/W	5 strand barb	5100	\$31,817	\$6.24	EQIP cost sharing used for this fence.	15-20	2008
2" water line	3000		2" water line	1000	\$10,153	\$10.15		20	2009
					\$198,905				

EXHIBIT C

D-37.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division

December 14, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hi 96813

PSF: 01HD-412

HAWAII

Grant of Term, Non-Exclusive Easement to the Department of Transportation, Highways Division in Connection with the Saddle Road Improvements Project for Palila Critical Habitat (PCH) Mitigation Purposes Affecting Portions of General Lease (GL) Nos: S-4471, S-4475, S-4477 and S-4478; Implement Act 236 SLH 2001 Mandates; and Issuance of Right-of-Entry for Management purposes; Kaohe 2nd and 3rd and Kalopa, Hamakua, North Hilo, Hawaii, Tax Map Keys: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2

APPLICANT:

Department of Transportation (DOT), Highways Division in coordination with the Federal Highways Administration (FHWA).

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of the Government Land of Kaohe 2nd and 3rd and Kalopa, Hamakua, North Hilo, Hawaii, identified by Tax Map Key: 4-3-10: Por. 2 and 6; 4-4-14: Por. 2 and 3; and 4-4-15: Por. 2, as shown on the attached maps labeled Exhibit A.

AREA:

Tax Map Key	Area (acres) Requested	Encumbrance
4-3-10: 2	2,228.384	GL 4478
4-3-10: 8	790.943	GL 4477
4-4-14: 2	1,202.000	GL 4475
4-4-14: 3	921.629	GL 4475
4-4-15: 2	<u>1,399.335</u>	GL 4471
Total Area Requested	6,542.291	

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: Agricultural (A-40a)

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

12/14/2001

EXHIBIT D

ITEM D-37

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

GL 4471 (TMK: 4-4-15: 2) to Parker Ranch for pasture purposes, expiring February 28, 2001.

GL 4475 (TMK: 4-4-14: Por. 2 and 3) to KK Ranch Inc. for pasture purposes, expiring February 28, 2011.

GL 4477 (TMK: 4-3-10: 8) to Schuman Carriage Company for pasture purposes, expiring February 28, 2011.

GL 4478 (TMK: 4-3-10: 2) to Boteilho Hawaii Enterprises for pasture purposes, expiring February 28, 2011.

CHARACTER OF USE:

The long-term restoration of a viable mamane (*Sophora chrysophylla*) forest that can support self-sustaining Palila populations as well as the expansion and/or re-introduction of Palila populations and control of Palila predators and alien species detrimental to the survival of the Palila.

COMMENCEMENT DATE:

Date of issuance.

LEASE TERM:

Ten (10) years

CONSIDERATION:

Fair market value, payable as a one-time payment, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In compliance with the National Environmental Policy Act and Chapter 343, Hawaii Revised Statutes, as amended, the Final Environmental Impact Statement was submitted to the Office of Environmental Quality Control for publication of its Notice of Acceptance. The Record of Decision, summarizing all of the mitigation commitments for the Saddle Road Improvements Project, was approved on October 30, 1999.

The use of the subject lands for Palila mitigation purposes was identified in the Final Environmental Impact Statement.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine the fair market value as a one-time payment.
2. Provide the Department of Land and Natural Resources (DLNR) with survey maps and descriptions for the easement area according to Department of Accounting and General Services, Survey Division standards at the Applicant's own cost.

REMARKS:

The Saddle Road Improvements Project involves the realignment and improvement of Saddle Road from Mamalahoa Highway (State Route 190) to Milepost 6, near the town of Hilo, a distance of approximately 48 miles.

The Saddle Road alignment that best meets its purpose impacts approximately 102.5 acres of federally designated Palila Critical Habitat (PCH) established pursuant to the US Endangered Species Act (ESA). The US Fish and Wildlife Service, which is responsible for the administration of the ESA, has determined that the construction of the improvements within the PCH will not jeopardize the Palila nor adversely modify the PCH, provided, that conservation measures identified in the ROD and the Memorandum of Understanding (MOU) regarding implementation of the Saddle Road PCH mitigation, dated August 10, 1999 are implemented.

The MOU determined that the Palila Mitigation, as presented in the Saddle Road Biological Opinion (BO) for the selected alignment, is necessary and must be implemented to ensure the successful completion of the proposed project. The BO, as a condition of constructing the Saddle Road realignment within the PCH, required the following:

1. Provision of approximately 5,143 acres of land on the north slope of Mauna Kea for Palila habitat restoration.
2. Provision of approximately 1,400 acres of land immediately adjacent to the current Palila population on the West slope of Mauna Kea for Palila habitat restoration.
3. The management of these lands for the re-establishment/sustenance of Palila in accordance with the MOU.

Staff is recommending that the PCH Mitigation Lands easement overlay the subject pasture leases. The easement will impact the leases in that ungulates, including cattle and sheep, will not be permitted to graze within the easement area as part of the requirements of the MOU and BO. This will cause the displacement of the existing lessees from grazing these lands. However, uses not inconsistent with the primary goal of the Palila mitigation program will be allowed.

DOT, in coordination with FHWA will provide compensation to the existing lessees in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979, as amended. Under this Act, the tenants are eligible for reimbursement of actual reasonable expenses for vacation of the property under the relocation provisions, as well as any required payment for improvements to the property. Compensation for improvements would consist of payment for the permanent improvements (buildings, wells, new fences, etc.) made to the properties by the lessees in accordance with the lease.

In recognition of the potential impacts to the State's lessees, the 2001 Hawaii State Legislature enacted Act 236, which directs the Department of Land and Natural Resources to "expedite discussions with representatives from Parker Ranch, K.K. Ranch, Inc., S.C. Corporation, and Boteilho Ent., Inc. to identify and investigate all alternatives that will:

1. Fairly compensate the ranchers for losses suffered as a result of the withdrawal of any leased lands; and
2. Avoid providing exceptions to public land leasing policies.

The department shall also authorize the lessees to utilize ten percent of remaining land for alternative agriculture use at no increase in the lease rent rate."

In compliance with the Act, staff is recommending that the lease rents be reduced in proportion to the areas being affected by the PCH Mitigation Lands easement. In addition, staff is recommending that lease extensions, consistent with existing leasing policy, be considered for these leases, up to the maximum term of 55 years as provided in Chapter 171, Hawaii Revised Statutes, as amended. This would allow the lessees another 20 years to recoup the operations consequences of the reduced leased areas. The lease extensions should be considered up to the termination of the leases in 2011.

RECOMMENDATION:

That the Board, subject to the Applicant requirements above

- A. Authorize the issuance of an easement covering the subject PCH Mitigation Lands for the purpose of the long term restoration of a viable mamane forest that can support self sustaining Palila populations as well as the expansion and/or re-introduction of Palila populations and control of Palila predators and alien species detrimental to the survival of the Palila, subject to any applicable terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
 1. All uses within the easement area shall be consistent with the purpose stated above. Any potential uses, including any use by the existing lessees, shall be evaluated and permitted only if the proposed use does not compromise the restoration of the mamane forest.
 2. All management actions shall be consistent with the Palila mitigation goals as guided by the Biological Assessment of the Hawaii State Route 200-Mamalahoa Highway to Milepost 6 Saddle Road Realignment Project, Island of Hawaii, the Biological Opinion of the US Fish and Wildlife Service for the Saddle Road Improvements Project and the US Fish and Wildlife Service's Palila Recovery Plan and all updates thereto.

3. All management plans or actions recommended for the easement area shall be in accordance with DLNR rules and regulations.
 4. Hunting activities that do not compromise the restoration of the mamane forest may be may be allowed (under the authority of DLNR) within the easement area, provided that such activities are consistent with the terms and conditions of the existing leases.
 5. The easement area shall be fenced and both domestic and feral ungulates, including cattle and sheep, removed.
 6. Access to and use of the PCH Mitigation Lands by the existing lessees shall be consistent with its purpose and subject to approval by DOT or its assigns, which will not be unreasonably withheld.
- B. Pursuant to Act 236 SLH 2001, authorize a reduction in lease rental for GL 4471, 4475, 4477 and 4478 in proportion to the leased area being impacted by the easement. The reductions shall be a percent equal to the easement area divided by the total leased area.
- C. Pursuant to Act 236 SLH 2001, amend GL 4471, 4475, 4477 and 4478 by authorizing the lessees to utilize ten percent (10%) of their remaining leased premises for alternative agriculture use at no increase in the lease rent.
- D. Agree in principal to the extension of the terms of the above leases in accordance with the provisions of Section 171-36(b), Hawaii Revised Statutes, as amended and existing Board policies for such extensions.
- E. Authorize the issuance of an immediate right-of-entry to the Applicant to enter upon the easement area for management purposes, subject to the following:
1. Effective upon approval and shall expire one (1) year thereafter, unless extended by the Department.
 2. The Grantee shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State and County governments relative to the use of the subject premises.
 3. Indemnity and hold harmless clause.
 4. Liability insurance coverage clause for agents, consultants and/or contractors of DOT, Highways Division.
 5. Non-discrimination clause.
 6. Hazardous waste clause.
 7. Archeological artifacts clause.

December 14, 2001

8. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

Gary Martin

GARY MARTIN
Land Agent

12/14/01

APPROVED FOR SUBMITTAL:

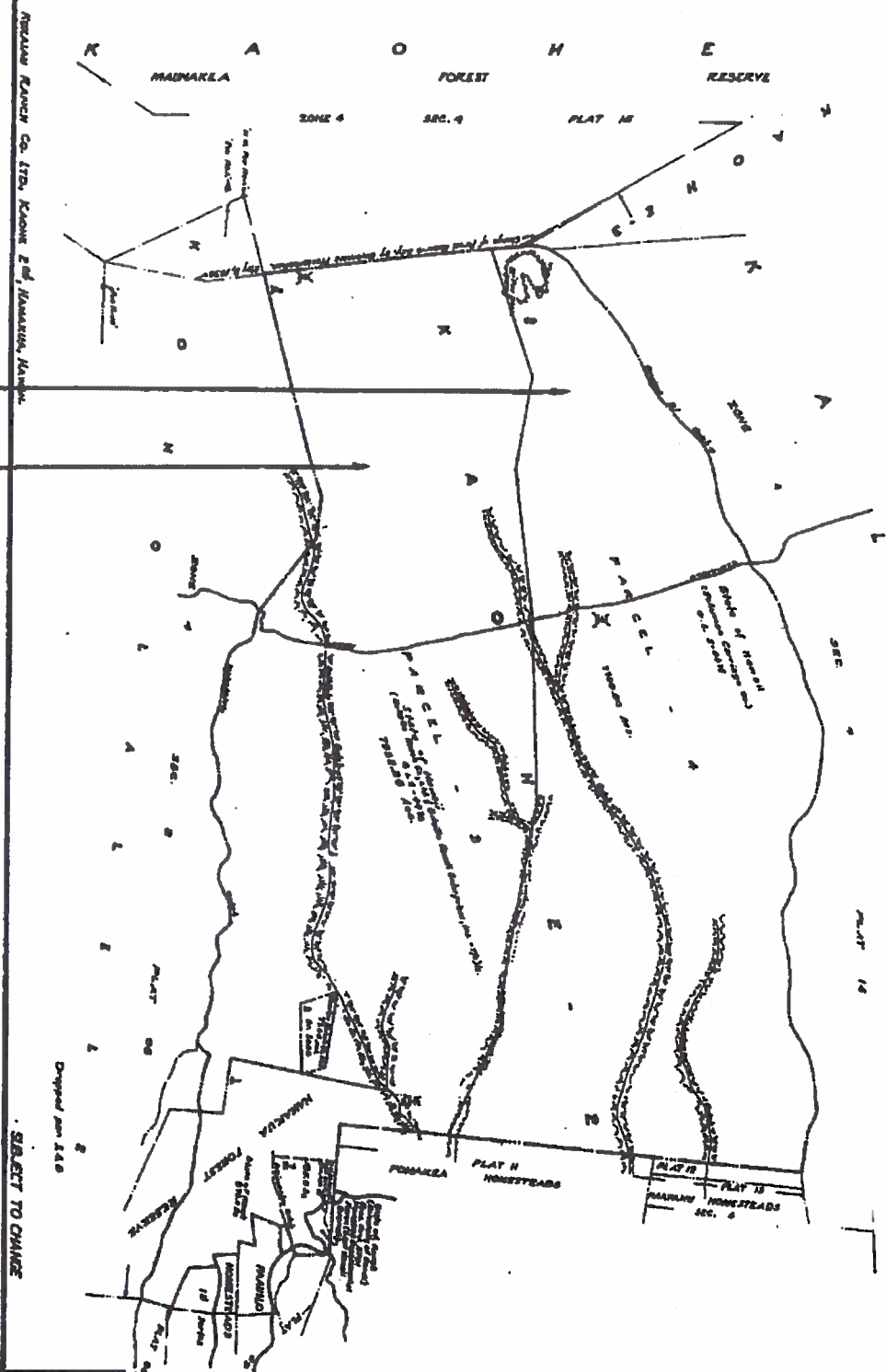
Gilbert S. Coloma-Agaran

GC GILBERT S. COLOMA-AGARAN, Chairperson

Map No. 3479
 Subject: Hawaiian Sugar Bureau & Survey Dept.
 By: I.E.H. - July 1964

GL 4477

GL 4478



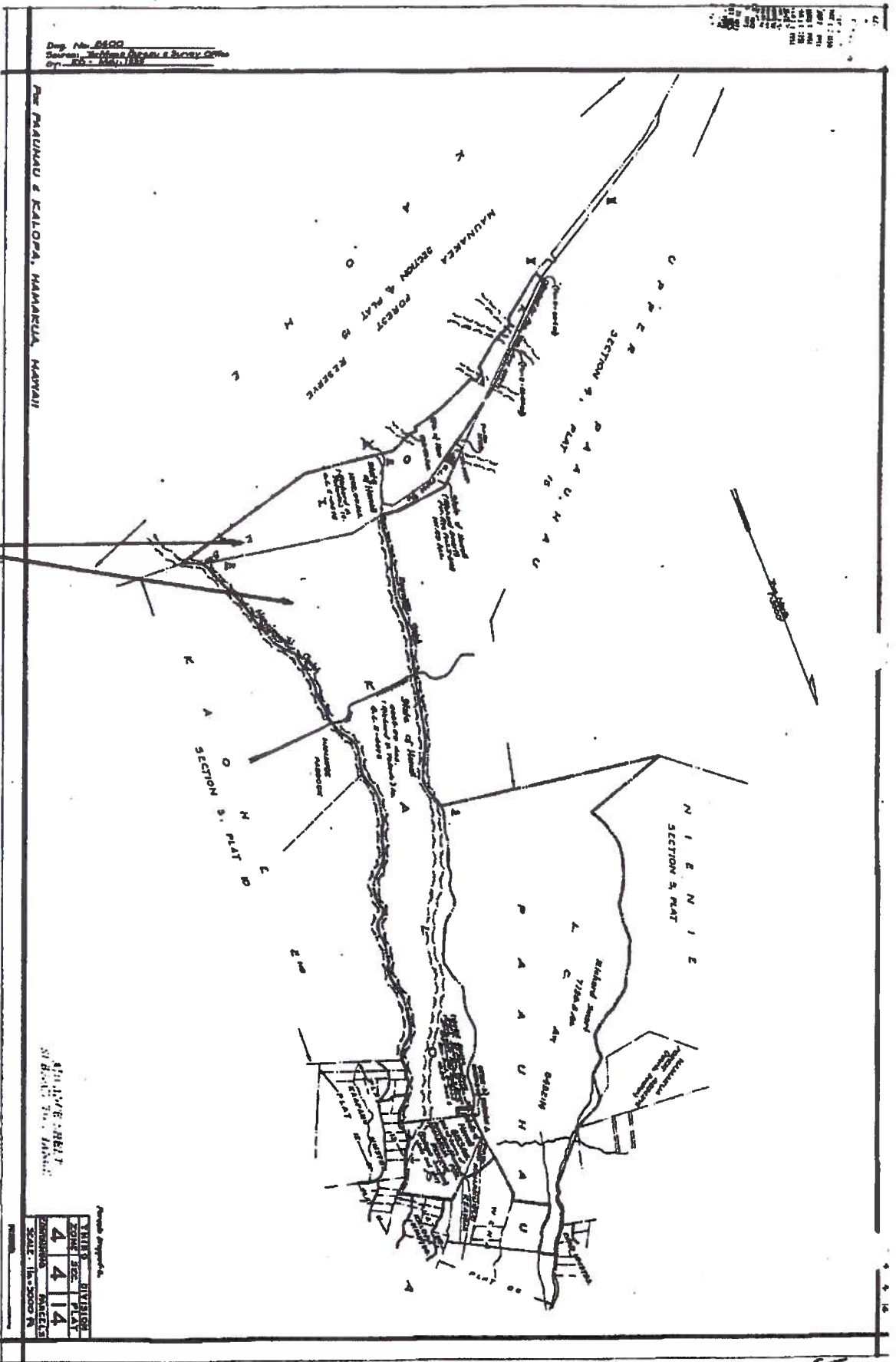
SUBJECT TO CHANGE

SECTION	PLAT	SEC.	ZONE
4	3	10	

Dep. No. 2500
 Surveyed by James H. Brown & Survey Co.
 Feb. 1914

For MAUNAU & KALOFA, HAWAII, HAWAII

GL 4475

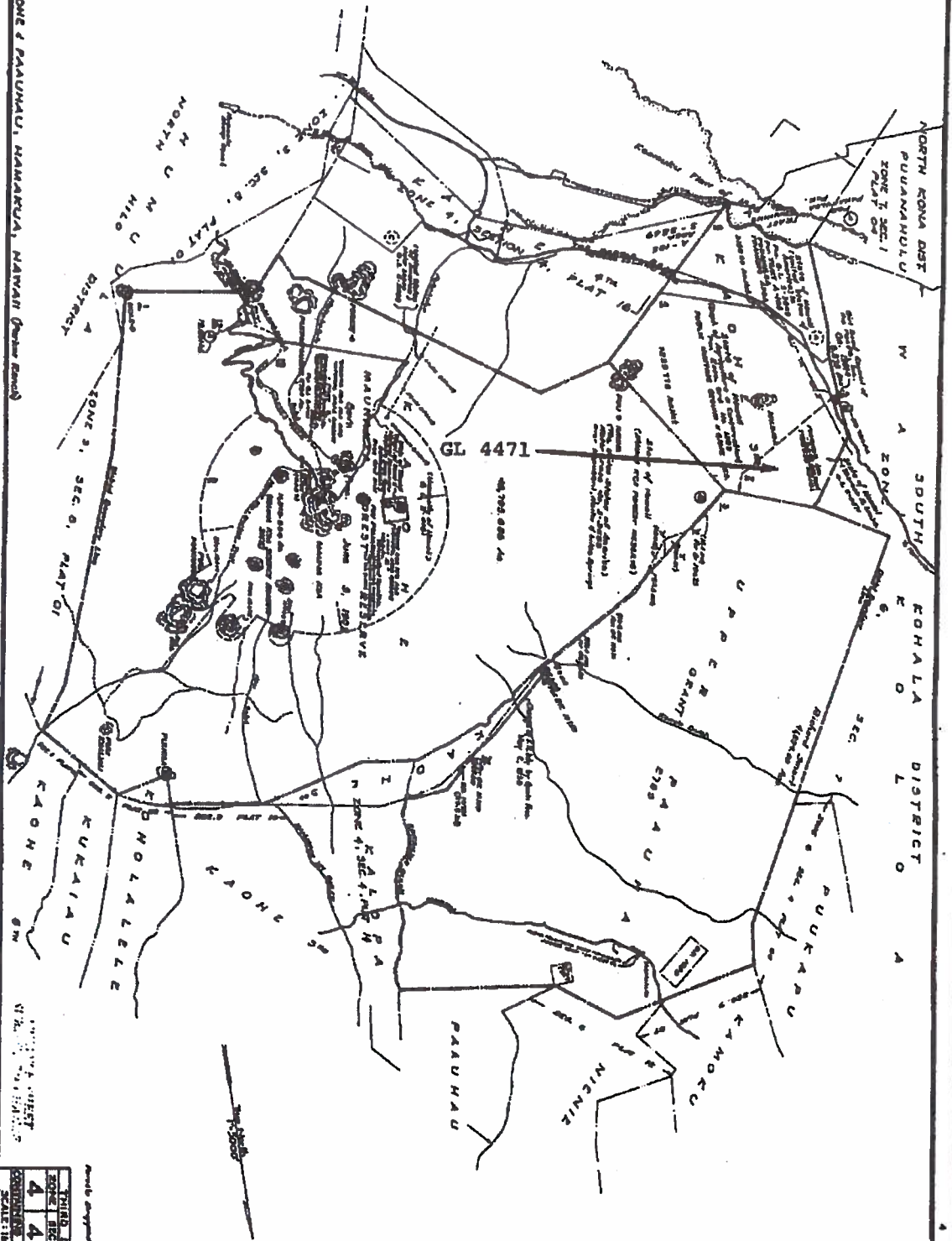


AS SHOWN ON THE
 IN BOOK 700, HAWAII

PLAT	4	4	1	4
SECTION	4	3	2	1
TOWN	MAUNAU	KALOFA	HAWAII	HAWAII
SCALE	1 in = 5000 ft			

Map No. 2408
 Showing Property of the State of Hawaii
 By Act of the Legislature, March 1939

FOR KAONE & PAUHAU, NAWAHO, NAWAHO DISTRICT



North of map 45.4
 SCALE: 1 in. = 1000 ft.

THIRD SYSTEM
4 4 15
4 4 15
4 4 15



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122, Box 50088
Honolulu, Hawaii 96850

In Reply Refer To:
2010-TA-0454

AUG 25 2010

Mr. Gordon Heit
State of Hawaii
Department of Land and Natural Resources
Land Division
75 Aupuni Center, 204
Hilo, Hawaii 96720

Subject: Withdrawal Portion of GL S-4475, Set-aside to DOFAW and Extension of Lease for GL S-4475 K.K. Ranch, Inc.

Dear Mr. Heit:

We are in receipt of your August 11, 2010 request for our comments regarding a draft submittal to the Board of Land and Natural Resources. The Division of Forestry and Wildlife (DOFAW) is requesting: 1) to withdraw approximately 2,176 acres (ac) from General Lease No. S-4475; 2) approval in concept of the set-aside of the same to DOFAW for addition to the Mauna Kea Forest Reserve; and 3) issuance of immediate management right-of-entry to DOFAW covering such 2,176 ac. K.K. Ranch, Inc. is requesting an extension of General Lease No. S-4475 as to approximately 5,105 ac remaining after the withdrawal of the above-mentioned lands. In order for the lessee to amortize this expenditure, the lessee is requesting an extension of the remaining area of General Lease No. S-4475 for a term of 20 years, commencing on March 1, 2011 and expiring on February 28, 2031. Our comments are limited to the three items requested by DOFAW as listed above.

Pursuant to section 7 of the Endangered Species Act (16 U.S.C. § 1531), in 1998, the U.S. Fish and Wildlife Service issued a Biological Opinion for the Saddle Road Realignment and Improvement Project. In this Biological Opinion, we determined the expansion and realignment of Saddle Road would not jeopardize the continued existence of palila (*Loxioides bailleui*) or adversely modify palila critical habitat, based in part on the conservation of Puu Mali and Kaohe as mitigation sites. The 1998 Biological Opinion states "habitat elsewhere on Mauna Kea will be enhanced for palila by securing land (lease, easement or fee purchase) and promoting habitat restoration." The intent of the Biological Opinion was that habitat for the palila would be enhanced or preserved for the long term. To date, the Federal Highway Administration has spent approximately three million dollars constructing ungulate-proof fencing around Puu Mali and Kaohe. In addition, over the last decade millions of dollars have been spent to translocate palila to the north slope of Mauna Kea near Puu Mali in order to establish a second population of this critically endangered bird.

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IN AMERICA** 

EXHIBIT E

We fully support the transfer of parcels Tax Map Key: 3rd/4-4-14: 02 and por. 03 to the Mauna Kea Forest Reserve. This parcel is a portion of the Puu Mali mitigation site. This transfer would result in long-term protection of palila habitat. Should this parcel revert to cattle grazing, we would need to reanalyze the effects of the action from the 1998 Biological Opinion and take into consideration the loss of these mitigation lands for palila. The resumption of grazing on these lands would reverse any mamane/naio forest regeneration that has occurred during the last 10 years and undo our forward momentum for habitat restoration on Mauna Kea. According to Division of Forestry and Wildlife biologists, the State has spent approximately half a million dollars restoring mamane habitat in Puu Mali in order to help sustain the second population of palila. Clearly, significant effort has been invested in this interagency effort to enhance habitat and translocate palila and progress would be reversed if these mitigation lands revert to pasture lands.

Thank you for the opportunity to comment on this land transfer. If you have questions, please contact Dr. Jeff Zimpfer, Consultation and Habitat Conservation Planning Program (phone: 808 792-9431; email jeff-zimpfer@fws.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Loyal A. Mehrhoff", with a long horizontal flourish extending to the right.

for Loyal Mehrhoff
Field Supervisor